

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

FRANCISCO JESUS ESPARZA-RAMOS v. STATE OF TENNESSEE

**Appeal from the Circuit Court for Rutherford County
No. M-60874**

No. M2008-02103-CCA-R3-CO - Filed June 19, 2009

This matter is before the Court upon the State's motion to dismiss or in the alternative to affirm the judgment of the trial court by memorandum opinion pursuant to Rule 20, Rules of the Court of Criminal Appeals. Petitioner, Francisco Jesus Esparza-Ramos, has appealed the Rutherford County Circuit Court's order dismissing his "Motion for Post-Conviction Relief Pursuant to the All-Writs Act 28 U.S.C. § 1651(a) - Writ in the Nature of Coram Nobis Alleging Denial of Counsel and Denial of Due process in Violation of the Sixth Amendment Supreme Court Jurisprudence as Set Forth in *Gideon v. Wainwright* (1963) 372 U.S. 335" in which Petitioner alleged that: (1) his guilty plea was entered involuntarily; (2) he was denied counsel; (3) he was unaware that his guilty plea could be used to enhance subsequent convictions; and (4) he was never advised that he had a right to appeal. Upon a review of the record in this case, we are persuaded that the trial court was correct in dismissing the petition for relief and that this case meets the criteria for affirmance pursuant to Rule 20, Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted, and the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals**

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES and ROBERT W. WEDEMEYER, JJ. joined.

John D. Drake, Murfreesboro, Tennessee, for the appellant, Francisco Jesus Esparza-Ramos,

Robert E. Cooper, Jr., Attorney General & Reporter; Clarence E. Lutz, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

Petitioner pled guilty in the Rutherford County General Sessions Court on September 15, 2003, to one count of misdemeanor possession of drug paraphernalia. As a result of the guilty plea, Petitioner was sentenced to eleven months and twenty-nine days, to be served on probation.

Subsequently, on October 5, 2007, Petitioner filed a “Motion for Post-Conviction Relief Pursuant to the All-Writs Act 28 U.S.C. § 1651(a) - Writ in the Nature of Coram Nobis Alleging Denial of Counsel and Denial of Due process in Violation of the Sixth Amendment Supreme Court Jurisprudence as Set Forth in *Gideon v. Wainright* (1963) 372 U.S. 335.” In the petition, Petitioner claimed that he had entered an unknowing and involuntary guilty plea, that he was denied the right to counsel, and that he was not informed that his guilty plea would be or could be used to enhance any subsequent convictions. The State filed a motion to dismiss.

On November 30, 2007, the Rutherford County Circuit Court denied Petitioner’s relief, treating the motion as a petition for coram nobis relief. Petitioner sought reconsideration of that order on January 28, 2008. The State responded by filing an amended motion to dismiss. The trial court appointed counsel and set the matter for hearing. The trial court held a hearing on July 7, 2008.

At that hearing, Petitioner testified that, at the time of the hearing, he was serving a federal sentence in Memphis. Petitioner informed the court that his federal sentence was enhanced based upon his guilty plea to possession of drug paraphernalia. Petitioner testified that, at the time of the guilty plea, he had lived in the United States for approximately nine years but had never received any formal education in English. Petitioner claimed that he was not informed that he had the right to have an attorney appointed to represent him during the plea. However, Petitioner agreed that he knew to what he was pleading guilty but claimed that he did not “understand some words” including “enhance” and “waiving.” Petitioner admitted that he did not tell the court that he needed an interpreter because he “wanted to get out of there.”

At the conclusion of the hearing, the trial court denied relief. Specifically, the trial court determined that the petition “was not filed in a timely manner” and that “even if the statute was tolled, based upon a reading of the transcript it is clear to this Court that [Petitioner] knowingly and intelligently entered into this guilty plea.”

Petitioner filed a timely notice of appeal. On appeal, he argues that the trial court improperly dismissed the petition for relief as untimely and reaffirms the grounds for relief as stated in the petition.

Analysis

Coram nobis relief is provided for in Tennessee Code Annotated section 40-26-105, which provides:

- (a) There is made available to convicted defendants in criminal cases a proceeding in the nature of a writ of error coram nobis, to be governed by the same rules and procedure applicable to the writ of error coram nobis in civil cases, except insofar as inconsistent herewith. Notice of the suing out of the writ shall be served on the district attorney general. No judge shall have authority to order the writ to operate

as a supersedeas. The court shall have authority to order the person having custody of the petitioner to produce the petitioner in court for the hearing of the proceeding.

(b) The relief obtainable by this proceeding shall be confined to errors dehors the record and to matters that were not or could not have been litigated on the trial of the case, on a motion for a new trial, on appeal in the nature of a writ of error, on writ of error, or in a habeas corpus proceeding. Upon a showing by the defendant that the defendant was without fault in failing to present certain evidence at the proper time, a writ of error coram nobis will lie for subsequently or newly discovered evidence relating to matters which were litigated at the trial if the judge determines that such evidence may have resulted in a different judgment, had it been presented at the trial.

(c) The issue shall be tried by the court without the intervention of a jury, and if the decision be in favor of the petitioner, the judgment complained of shall be set aside and the defendant shall be granted a new trial in that cause. In the event a new trial is granted, the court may, in its discretion, admit the petitioner to bail; provided, that the offense is bailable. If not admitted to bail, the petitioner shall be confined in the county jail to await trial.

(d) The petitioner or the state may pray an appeal in the nature of a writ of error to the supreme court from the final judgment in this proceeding.

Tennessee Code Annotated section 27-7-103 provides that the statute of limitations for coram nobis petitions is one year from the date the judgment from which relief is sought becomes final.

In the case herein Petitioner pled guilty in 2003, yet did not file for coram nobis relief until October 5, 2007, over four years after the judgment against him had become final. Petitioner has offered no reason for tolling of the one year filing limitation and thus the trial court properly dismissed the petition as time-barred. *See State v. Mixon*, 983 S.W.2d 661, 668 (Tenn. 1999). Petitioner is not entitled to relief.

Rule 20, Rules of the Court of Criminal Appeals provides inter alia:

The Court, with the concurrence of all judges participating in the case, when an opinion would have no precedential value, may affirm the judgment or action of the trial court by memorandum opinion rather than by formal opinion, when:

The judgment is rendered or the action taken in a proceeding before the trial judge without a jury, and such judgment or action is not a determination of guilt, and the evidence does not preponderate against the finding of the trial judge

We determine that this case meets the criteria of the above-quoted rule and, therefore, we grant the State's motion filed under Rule 20. We affirm the judgment of the trial court.

JERRY L. SMITH, JUDGE